

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: MERIX CORPORATION
SECURITIES LITIGATION,

CENTRAL LABORERS PENSION
FUND,

Plaintiff - Appellant,

v.

MERIX CORPORATION; et al.,

Defendants - Appellees.

No. 06-35894

D.C. Nos. CV-04-00826-MO
CV-04-00859-MO
CV-04-00860-MO
CV-04-00931-MO

MEMORANDUM *

Appeal from the United States District Court
for the District of Oregon
Michael W. Mosman, District Judge, Presiding

Argued and Submitted February 8, 2008
Portland, Oregon

Before: RYMER, T.G. NELSON, and PAEZ, Circuit Judges.

Central Laborers Pension Fund (the “Fund”) appeals the district court’s
dismissal with prejudice of the Fund’s Second Consolidated and Amended Class

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Action Complaint (“SAC”) alleging violations of Sections 12 and 15 of the Securities Act by Merix Corporation and various other individuals and companies (collectively, “Defendants”). We have jurisdiction over this appeal under 28 U.S.C. § 1291. We reverse.

The Fund is not foreclosed from making allegations or claims in the SAC that are inconsistent with or contradicted by allegations or claims made in the Fund’s previous complaint. *See PAE Gov’t Servs. v. MPRI, Inc.*, 514 F.3d 856, 858-60 (9th Cir. 2007).

Fraud is not an essential element of the claims raised in the SAC, and the SAC neither specifically alleges fraud, nor does it allege facts that *necessarily* constitute fraud. *See Vess v. CIBA-GEIGY Corp. USA*, 317 F.3d 1097, 1104-05 (9th Cir. 2003). Accordingly, the allegations in the SAC do not “sound in fraud” and the SAC is not required to comply with the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). *See id.*

We have considered and reject the additional arguments raised by Defendants.

REVERSED AND REMANDED.